1992

State of Utah v. Joseph Charles Gardner, Jr. : Brief of Appellee

Utah Supreme Court

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R. Paul van Dam; Attorney General; Creighton C. Horton II; Assistant Attorney General; Attorneys for Appellee.

DOCKET NO. 920104 ~~IN THE SUPREME~~ COURT OF THE STATE OF UTAH

STATE OF UTAH, :

Plaintiff/Appellee, : Case No. 920104

-vs- :

JOSEPH CHARLES GARDNER, JR., : Category No. 2

Defendant/Appellant. :

BRIEF OF APPELLEE

- - - - - - - - -

AN APPEAL FROM A CONVICTION FOR CRIMINAL HOMICIDE, MURDER IN THE FIRST DEGREE, A CAPITAL OFFENSE, IN THE FIFTH JUDICIAL DISTRICT COURT IN AND FOR THE COUNTY OF WASHINGTON, STATE OF UTAH, THE HONORABLE J. PHILIP EVES, PRESIDING.

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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,	:	
Plaintiff/Appellee,	:	Case No. 920104
-vs-	:	
JOSEPH CHARLES GARDNER, JR.,	:	Category No. 2
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Plaintiff/Appellee,	:	Case No. 920104
-vs-	:	
JOSEPH CHARLES GARDNER, JR.,	:	Category No. 2
Defendant/Appellant	:	

BRIEF OF APPELLEE

JURISDICTION AND NATURE OF PROCEEDINGS

Pursuant to a plea bargain, defendant pled guilty to criminal homicide, murder in the first degree, a violation of Utah Code Ann. § 76-5-202 (1990). In exchange for such plea, the State dismissed a second count of aggravated burglary and agreed not to ask for the death penalty. Defendant's plea was entered conditionally pursuant to State v. Sery, 759 P.2d 935 (Utah App. 1988), to preserve his right to appeal from a pretrial order concerning the legal standard applicable to the defense of involuntary intoxication. He was sentenced to life imprisonment.

This Court has jurisdiction pursuant to Utah Code Ann. § 78-2-2(3)(i) (1992).

STATEMENT OF THE ISSUES AND STANDARD OF APPELLATE REVIEW

The only issue on appeal is: Did the trial court properly determine the legal standard applicable to the defense of involuntary intoxication?

Standard of Review: This Court accords the trial court's conclusions of law no deference but reviews them for correctness. Scharf v. BMG Corp., 700 P.2d 1068 (Utah 1985).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Utah Code Ann., § 76-2-305 (Supp. 1992):

> (1) It is a defense to a prosecution under any statute or ordinance that the defendant, as a result of mental illness, lacked the mental state required as an element of the offense charged. Mental illness is not otherwise a defense.
>
> (2)...
>
> (3) A person who is under the influence of voluntarily consumed or injected alcohol, controlled substances, or volatile substances at the time of the alleged offense is not excused from criminal responsibility on the basis of mental illness.
>
> (4) "Mental illness" means a mental disease or defect that substantially impairs a person's mental, emotional, or behavioral functioning. A mental defect may be a congenital condition, the result of injury, or a residual effect of a physical or mental disease and includes, but is not limited to, mental retardation. Mental illness does not mean a personality or character disorder or abnormality manifested only by repeated criminal conduct.
>
> (5)...

Utah Code Ann., § 76-2-306 (1990):

> Voluntary intoxication shall not be a defense to a criminal charge unless such intoxication negates the existence of the mental state which is an element of the offense; however, if recklessness or criminal negligence establishes an element of an offense and the actor is unaware of the risk because of voluntary intoxication, his unawareness is immaterial in a prosecution for that offense.

Utah Code Ann., § 76-5-202 (1990):

> (1) Criminal homicide constitutes murder in the first degree if the actor intentionally or knowingly causes the death of another under any of the following circumstances:

> (d) The homicide was committed while the actor was engaged in the commission of, or an attempt to commit, or flight after committing or attempting to commit,...aggravated burglary...

STATEMENT OF THE CASE

On July 25, 1990, the State of Utah filed an information against defendant, charging him with criminal homicide, murder in the first degree, a capital offense (R. 5). Thereafter, on September 5, 1991, the State filed an amended information adding a second count of aggravated burglary, a first degree felony (R. 66).

On September 5, 1991, defendant entered pleas of not guilty and not guilty by reason of insanity (R. 68-73).

Based upon representations by defense counsel that the defense would be involuntary intoxication based upon the ingestion of the prescription drug Prozac, the State filed a Motion for Pre-trial Determination of Legal Standard Re: Defense of Involuntary Intoxication (R. 85-87), together with a supporting memorandum of points and authorities (R. 88-102).

On November 21, 1991, defendant filed a Request for Declaratory Judgment Re: Involuntary Intoxication (R. 159-164), joining the State's request for a pretrial determination of the applicable legal standard.

A hearing was held on November 26, 1991, after which additional memoranda were filed by the parties concerning the applicable legal standard (R. 176-181, 193-201).

On January 8, 1992, the trial court issued its Order Re: Legal Standard Applicable to Defense of Involuntary Intoxication (R. 242-

243 contains original order with typographical error, which is reproduced in Appendix 2 of defendant's brief; the typographical error was not noted until after defendant filed his brief). The trial court's corrected order is contained in the supplemental record filed with this Court on November 9, 1992. A copy of the motion, stipulation and corrected order are attached hereto as Addendum A.

Because no hearing was ever held or testimony ever received concerning whether defendant would qualify factually or legally for an involuntary intoxication defense, the trial court's order listed principles applicable to voluntary intoxication as well as involuntary intoxication.

On January 10, 1992, defendant pled guilty to Count I, Criminal Homicide, Murder in the First Degree, pursuant to the Statement of Defendant and Plea Agreement which he signed in open court (R. 267-276). According the terms of the agreement, the State dismissed Count II, Aggravated Burglary, and further agreed that it would not seek the death penalty. Defendant's plea was entered conditionally to preserve for appeal the issue concerning the legal standard applicable to the defense of involuntary intoxication which was the subject of the trial court's ruling (R. 271).

Defendant timely filed a notice of appeal (R. 285-286).

STATEMENT OF FACTS

In the early morning hours of July 22, 1990, defendant unlawfully entered the apartment of Janice Fondren in St. George,

Utah, and killed her with a 9 mm. pistol (R. 268). He was thereafter charged with first degree murder and aggravated burglary.

SUMMARY OF ARGUMENT

The trial court properly ruled that involuntary intoxication leading to a temporary mental illness can constitute a defense if brought within Utah Code Ann. § 76-2-305 (Supp. 1992), which by its very terms governs all mental illness defenses in Utah. That statute specifically excludes from the defense any mental illness brought about through voluntary intoxication, but does not so exclude involuntary intoxication. The trial court's ruling is consistent with the statute and with authority that the mental state of an involuntarily intoxicated defendant is measured by the test of legal insanity.

The trial court properly ruled that "irresistible impulse," or inability to conform one's conduct to the requirements of law, is no longer a defense under Utah law. The Legislature specifically repealed irresistible impulse as a mental illness defense in 1983, as did the United States Congress and a number of state legislatures. Had the trial court instructed that irresistible impulse was a defense, it would have constituted error.

ARGUMENT

POINT I

THE TRIAL COURT'S ORDER CORRECTLY INCORPORATES THE PRINCIPLES OF UTAH LAW APPLICABLE TO THE DEFENSE OF INVOLUNTARY INTOXICATION.

It is important at the outset to point out that the trial

court's order deals only with the legal standard for involuntary intoxication which would apply **should the defendant factually and legally qualify for it.** There are a variety of factual issues which were never addressed at the trial court level, including the following: to what extent, if any, defendant may have actually ingested any prescription drug, either alone or in combination with other substances prior to the crime; whether any such drugs in fact affected his behavior in any way; whether, if he took such drugs, they were taken under the direction of a physician; whether, if they were so taken and he were rendered intoxicated by them, such would render his intoxication "involuntary"; and like considerations. The State points this out as an initial matter so that the Court understands that the State in no way accepts the premise that defendant would qualify either factually or legally for an involuntary intoxication defense if the case went to trial. The State's consistent position throughout the proceedings below has been that these are open questions which would be the subject of further hearings and the production of evidence before any determination could be made (R. 193-201).

This case is therefore before the Court solely on the issue of the trial court's interpretation of Utah law as it pertains to the defense of involuntary intoxication. In other words, assuming for the purpose of argument that defendant could otherwise qualify for an involuntary intoxication defense, what is the proper legal standard which would govern it?

Since the Utah Criminal Code contains no specific defense of

involuntary intoxication, the State raised the issue early in the proceedings, and defendant agreed that it would be to the benefit of all parties to have the legal issue resolved at the outset. The trial court properly ruled on the legal standard which would apply in such circumstances, as explained below.

A. THE TRIAL COURT PROPERLY RULED THAT INVOLUNTARY INTOXICATION LEADING TO A TEMPORARY MENTAL ILLNESS CAN CONSTITUTE A DEFENSE IF BROUGHT WITHIN THE PROVISIONS OF UTAH CODE ANN. § 76-2-305.

The trial court correctly ruled that involuntary intoxication leading to a temporary mental illness can constitute a defense in Utah.

Utah Code Ann. § 76-2-305 (Supp. 1992) provides in part as follows:

> (1) It is a defense to a prosecution under any statute...that the defendant, as a result of mental illness, lacked the mental state required as an element of the offense charged. Mental illness is not otherwise a defense.
>
> (3) A person who is under the influence of voluntarily consumed or injected alcohol, controlled substances, or volatile substances at the time of the alleged offense is not excused from criminal responsibility on the basis of mental illness.
>
> (4) "Mental illness" means a mental disease or defect that substantially impairs a person's mental, emotional, or behavioral functioning....

(emphasis added).

By its very terms, then, section 76-2-305 governs all mental defenses in Utah. The trial court addressed the question of whether involuntary intoxication leading to a temporary mental illness could constitute a defense, notwithstanding the absence of

a specific statute in Utah covering involuntary intoxication. While section 76-2-305(3) specifically excludes from the defense any mental illness brought about through voluntary intoxication, it does not rule out involuntary intoxication as a defense under the statute. Thus, involuntary intoxication is still available as a defense under the mental illness defense statute, provided the defendant can bring forth evidence that such intoxication was in fact involuntarily induced.

Involuntary intoxication is generally recognized as a defense in instances where a defendant is rendered temporarily insane due to the ingestion of prescription medication taken under the direction of a physician. See Involuntary Intoxication as Defense, 73 A.L.R.3d 195, 214-216 (1976).

An accused who is unable to form the statutory mental state due to either mental illness or involuntary intoxication leading to temporary mental illness can avail himself of the defense under section 76-2-305. To the extent such a defendant does not form the mental state to commit the crime, he is not blameworthy. This applies equally to defendants who are mentally ill and those whose mental derangement is caused by involuntary intoxication. Defendant's claim that he should be allowed to assert a defense standard different from and more favorable to him than that applicable to other mental illness defenses is not supported by authority.

Several other states, which, like Utah, have no statutory defense of involuntary intoxication, recognize it as coming within

their general insanity statutes as a type of temporary insanity. People v. Wilkins, 459 N.W.2d 57 (Mich. 1990); Jones v. State, 648 P.2d 1251, 1258 (Okl.Cr. 1982). See also R. Perkins & R. Boyce, Criminal Law 1005 (3d ed. 1982) (involuntary intoxication establishes that the accused's "derangement is without culpability and hence is to be dealt with the same as if it were the result of mental disease or defect")

Federal decisions have also recognized that "the mental state of an involuntarily intoxicated defendant is measured by the test of legal insanity." United States v. F.D.L., 836 F.2d 1113, 1116 (8th Cir. 1988).

"To establish an involuntary intoxication defense it must not only be proven that the defendant was involuntarily intoxicated, but also that because of his intoxication he was rendered legally insane during the time he committed the offense." 73 A.L.R.3d at 204.

As indicated, the defense of insanity in Utah is governed by section 76-2-305. A brief historical overview of the evolution of the defense of mental disease or defect helps put the present statute into perspective.

In 1973, the Utah Legislature for the first time codified the defense of insanity, and provided as follows:

> In any prosecution for an offense, it shall be a defense that the defendant at the time of the proscribed conduct, as a result of mental disease or defect, lacked substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.

Former § 76-2-305 (L. 1973, ch. 196, § 76-2-305).

This was a codification of the Model Penal Code formulation for insanity, and was consistent with the former common law standard, as a combination of the M'Naghten test and the "irresistible impulse" test. State v. Dominguez, 564 P.2d 768, 770 (Utah 1977).

The M'Naghten rule, established in England in 1843, provided that:

> to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong.

10 Cl. & F. 200, 3 Eng.Reprint 718 (1843).

The M'Naghten standard has been widely applied throughout the United States, either through case law decisions or through state statutes.

In 1983, the Utah Legislature explicitly rejected the M'Naghten/"irresistible impulse"/Model Penal Code standard by repealing and reenacting section 76-2-305 in its present form. The standard now focuses exclusively on the defendant's mens rea, that is, whether the defendant lacked the mental state required as an element of the offense charged.

The Legislature simultaneously enacted "guilty and mentally ill" provisions which may apply to defendants who were mentally ill at the time of the offense but who nonetheless were able to form the mental state set out in the statute. Utah Code Ann. § 77-35-

21.5 (1982) (repealed effective July 1, 1990; currently contained in Rule 21.5, Utah Rules of Criminal Procedure). See also State v. DePlonty, 749 P.2d 621, 627 (Utah 1987). (For further insight into legislative intent, see "Report on the Insanity Defense in Criminal Prosecution and Proposed Legislation" from the Task Force Committee on Insanity Defense, dated December 27, 1982, attached hereto as Addendum B.)

While there is case law pertaining to involuntary intoxication from other jurisdictions which focuses on the ability of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law, such cases are readily distinguishable. Those jurisdictions have either codified the defense of involuntary intoxication, as is the case in Colorado [Colo. Rev. Stat. § 18-1-804 (1986)], or they still adhere to the Model Penal Code or common law test for insanity, so that their standard for involuntary intoxication is consistent with their insanity statutes or rules. See W. LaFave & A. Scott, Handbook on Criminal Law § 45 at 347 (1972) (involuntary intoxication is "a defense if it puts the defendant in such a state of mind, e.g., so that he does not know the nature and quality of his act or know that his act is wrong, in a jurisdiction which has adopted the M'Naghten test for insanity") (emphasis added).

As indicated above, Utah no longer follows the M'Naghten/"irresistible impulse" test, having enacted a strict mens rea mental defense statute in 1983 (§ 76-2-305) which exclusively governs all mental illness defenses.

Further, there is no common law defense of involuntary intoxication available in Utah. See State v. Gardiner, 814 P.2d 568, 573-574 (Utah 1991) (common law defenses abolished in 1973 when legislature enacted the Utah Criminal Code). The defense of involuntary intoxication is therefore governed by section 76-2-305 and not by any other legal standard, as the trial court properly ruled.

B. THE TRIAL COURT PROPERLY RULED THAT UTAH HAS ABOLISHED THE IRRESISTIBLE IMPULSE DEFENSE

A defendant has no constitutional right to an "irresistible impulse" defense. Leland v. Oregon, 343 U.S. 790, 72 S.Ct. 1002, 96 L.Ed. 1302 (1952). It is a creation of either statute or, in some states, common law. As such, it can be changed through legislation, as has occurred not only in Utah, but in other states as well. Hart v. State, 702 P.2d 651, 659 (Alaska App. 1985) (state may constitutionally eliminate from its insanity defense "irresistible impulse" or inability to conform one's conduct to requirements of the law.) Also, in 1984, the Congress of the United States abolished the volitional prong (ability to conform one's conduct to requirements of law) of the Model Penal Code by enacting 18 U.S.C. § 17.

Defendant's reference to Colo. Rev. Stat. § 18-1-804 (1986) does not advance his argument (Br. of Appellant at 10). Colorado has a different legal standard for involuntary intoxication and for insanity than Utah. Defendant undoubtedly prefers Colorado law, but it is not relevant to his case, and his argument is more appropriately directed to the Legislature. Citation to statutes or

case decisions from jurisdictions which adhere to legal standards which are different than Utah's is not helpful.

The only Utah case which touches on involuntary intoxication is State v. Potter, 627 P.2d 75 (Utah 1981). The Court stated in dicta that "when intoxication, whether voluntary or involuntarily produced, negates the existence of the state of mind required for the commission of the crime, the act or omission which otherwise would constitute an offense is purged of its criminality." Id. at 79. The case does not discuss irresistible impulse or the ability to conform one's conduct to the requirements of law. Rather, the relevant inquiry is whether the defendant was able to form the mens rea specified in the criminal statute.

The trial court's order properly stated Utah law. As indicated above, the Utah Legislature in 1983 specifically abolished the "irresistible impulse" defense, as did Congress and a number of state legislatures.

Had the trial court in the instant case ruled that irresistible impulse was an available defense, and had the court so instructed the jury at trial, it would have constituted error. See State v. Tost, 424 A.2d 293, 296, 297 (Conn. 1979)("the commingling of old common-law rules with the statutory rule, could only create confusion as to what was the correct standard for determining insanity"; "the only standard by which to determine insanity as a defense to a crime is that found in [the criminal statutes]").

CONCLUSION

Based upon the foregoing, the State respectfully requests that the Court affirm defendant's conviction for first degree murder.

DATED this 13th day of November, 1992.

R. PAUL VAN DAM
Attorney General

CREIGHTON C. HORTON II
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing BRIEF OF APPELLEE, postage prepaid, to Alan D. Boyack, attorney for defendant, at 205 East Tabernacle Street, St. George, Utah 84770, this 13th day of November, 1992.

ADDENDA

ADDENDUM A

Eric A. Ludlow #5104
Washington County Attorney
178 North 200 East
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(801) 634-5723

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT

IN AND FOR THE COUNTY OF WASHINGTON, STATE OF UTAH

STATE OF UTAH, Plaintiff, -vs- JOSEPH CHARLES GARDNER, JR., Defendant.	)	ORDER RE: LEGAL STANDARD APPLICABLE TO DEFENSE OF INVOLUNTARY INTOXICATION (Nunc Pro Tunc Order to correct typographical error) Criminal No. 901502200

The above-entitled matter having come before the Court on the 26th day of November, 1991, on State's motion for pretrial determination of the legal standard applicable to the defense of involuntary intoxication, and the Defendant being present and represented by Alan D. Boyack, the Plaintiff being represented by Eric A. Ludlow, Washington County Attorney, and both Counsel having indicated the desire for a pretrial determination of the applicable legal standard, and the Court having allowed supplemental briefing at the Defendant's request; the Court, having now reviewed the memoranda and supplemental memoranda of the parties, hereby issues the following order pertaining to the legal standards and principles applicable to the case as follows:

1. Involuntary intoxication leading to temporary mental illness can constitute a defense, if brought within the provisions of Utah Code Ann. § 76-2-305(1), which governs all mental illness

defenses by its very terms. ["It is a defense to a prosecution...that the defendant, as a result of mental illness, lacked the mental state required as an element of the offense charged. Mental illness is not otherwise a defense."]

2. Irresistible impulse, or a determination of whether a defendant lacked substantial capacity to conform his conduct to the requirements of law, is no longer the legal standard applicable to a mental illness defense in Utah, since the Utah Legislature in enacting the present law (L. 1983, ch. 49, § 1) specifically repealed the former test for insanity, which then included lacking substantial capacity "to conform [one's] conduct to the requirements of law." (L. 1973, ch. 196, § 76-2-305).

3. By statute, voluntary intoxication cannot constitute a complete defense to any crime which contains as an element of the charge or of a lesser included offense the culpable mental state of recklessness or of criminal negligence. [Utah Code Ann. § 76-2-306 provides that "...if recklessness or criminal negligence establishes an element of an offense and the actor is unaware of the risk because of voluntary intoxication, his unawareness is immaterial in a prosecution for that offense."]

4. Mental illness induced by voluntary intoxication is not a defense in Utah. ["A person who is under the influence of voluntarily consumed or injected alcohol, controlled substances, or volatile substances at the time of the alleged offense is not

excused from criminal responsibility on the basis of mental illness." Utah Code Ann. § 76-2-305(3).]

Nunc Pro Tunc order

DATED this 8th day of January, 1992.

J. PHILIP EVES
Fifth District Court Judge

STATE OF UTAH)
COUNTY OF WASHINGTON) ss

I, the undersigned, Clerk of the 5TH DISTRICT COURT, certify that this document is a true copy of the original document on file in my office.
WITNESS my hand and seal of the court this date November 05, 1992

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920104

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT

IN AND FOR THE COUNTY OF WASHINGTON, STATE OF UTAH

STATE OF UTAH,	:	
Plaintiff,	:	MOTION AND STIPULATION TO CORRECT TYPOGRAPHICAL ERROR IN COURT'S ORDER RE: LEGAL STANDARD
-vs-	:	APPLICABLE TO DEFENSE OF INVOLUNTARY INTOXICATION
JOSEPH CHARLES GARDNER, JR.,	:	Criminal No. 901502200
Defendant.	:	Judge J. Philip Eves

The State hereby moves the Court for a nunc pro tunc order correcting a typographical error which exists in its Order Re: Legal Standard Applicable to Defense of Involuntary Intoxication, dated January 8, 1992, for the following reasons:

1. The parties stipulate that paragraph 3 of the Court's order should begin with the words "Voluntary intoxication" rather than "Involuntary intoxication," and that the present order reads incorrectly due to a typographical error. The parties further agree to and request a nunc pro tunc order dated January 8, 1992.

2. Paragraph #3 of the Court's order begins, "By

statute, involuntary intoxication cannot constitute..." That language tracked page 7, paragraph #3 of the State's Supplemental Memorandum of Points and Authorities Re: Legal Standard for Involuntary Intoxication, which begins, "Voluntary intoxication cannot by statute constitute..."

3. The present wording of paragraph #3 of the order is internally inconsistent because it refers to involuntary intoxication while citing the statute pertaining to voluntary intoxication (Utah Code Ann. § 76-2-306).

4. The order is the subject of a present appeal before the Utah Supreme Court in this case, and needs to be corrected for purposes of appellate review.

WHEREFORE, the State respectfully requests that the Court sign the attached nunc pro tunc Order Re: Legal Standard Applicable to Defense of Involuntary Intoxication and direct the Clerk of the Court to certify this motion and the accompanying order, and forward them to the Utah Supreme Court after that Court grants the State's Motion to Supplement the Record.

DATED this 20th ~~day~~ of October, 1992.

ERIC A. LUDLOW
Washington County Attorney

CREIGHTON C. HORTON II
Assistant Attorney General

KEVIN L. MCCLOSKEY
Assistant Attorney General

STIPULATION OF DEFENSE COUNSEL

I hereby stipulate to the correction in the Court's Order **Re:** Legal Standard Applicable to Defense of Involuntary Intoxication according to the terms and for the reasons set out above, and further stipulate that the Court may enter a nunc pro tunc order dated January 8, 1992.

ALAN D. BOYACK
Attorney for Defendant

CERTIFICATE OF MAILING

This is to certify that I mailed a true and correct copy of the foregoing MOTION AND STIPULATION TO CORRECT TYPOGRAPHICAL ERROR IN COURT'S ORDER RE: LEGAL STANDARD APPLICABLE TO DEFENSE OF INVOLUNTARY INTOXICATION, postage prepaid, to the following this 8th day of October, 1992:

Alan D. Boyack
Attorney at Law
205 East Tabernacle, #203
St. George, Utah 84770

STATE OF UTAH, OF) ss
COUNTY OF WASHINGTON)
I, the undersigned Clerk of the
FIFTH DISTRICT COURT, certify that this documen
a true copy of the original document on file in
the Clerk's office
IN WITNESS) my hand and seal of the court
on this date November 5, 1992

ADDENDUM B

TASK FORCE COMMITTEE ON INSANITY DEFENSE

A REPORT ON THE INSANITY DEFENSE IN CRIMINAL PROSECUTION AND PROPOSED LEGISLATION

Robert S. Campbell, Jr., Chairman
Ronald N. Boyce, Esq.
Dr. Lincoln Clark
Earl R. Dorius, Esq.
J. Thomas Greene, Esq.
Dr. Bernard Grosser
W. Eugene Hansen, Esq.
Dr. Louis G. Moench
Robert J. Stansfield, Esq.
Dr. Jack L. Tedrow
Robert Van Sciver, Esq.
W. Robert Wright, Esq.

December 27, 1982

A REPORT ON THE INSANITY DEFENSE IN CRIMINAL PROSECUTION AND PROPOSED LEGISLATION

The problem of insanity and the criminal defendant has been a matter of concern almost since the inception of criminal prosecutions. Early in the development of the English criminal law it was ruled that a criminal act could not be punished if the actor had no more mental capacity than a "wild beast" or did not know "good from evil." As the judicial and medical communities acquired more sophistication concerning the mentally disturbed offender, the courts grappled with the issue of whether the ancient tests ought to be retained. In 1843, thirteen judges of the Queens Bench in England promulgated the so-called M'Naghten test in assessing whether the court that had acquitted Daniel M'Naghten in the killing of the Secretary to the Prime Minister of England had acted erroneously.

1. The M'Naghten Rule.

The test for insanity as articulated by the English judges was that if a defendant, because of a defect in reason due to a disease of the mind, did not know the quality of his act or know that it was wrong, he was entitled to be acquitted. The standard was adopted at a time when the English courts had not fully developed the concept of "criminal intent" or the state of mind necessary to convict of certain offenses. The test of insanity was independent of the mental state required for the offense and made the concept of insanity an affirmative defense. The M'Naghten test was soon adopted in the United States and became the standard defense of insanity in almost all jurisdictions in this country.

2. Irresistible Impulse Test.

After M'Naghten had been utilized for a number of years, some courts supplemented the M'Naghten standard by the so-called "irresistible impulse" test. That standard provided that if a criminal actor could not conform his conduct to the right he was entitled to acquittal. Utah adopted the modification of the M'Naghten rule and it remained the law in the State of Utah up until 1973, when the Utah Criminal Code was modified to adopt a new standard.

Other courts continued to struggle with the M'Naghten formula and its modifications, and in 1954 the United States Court of Appeals for the District of Columbia Circuit adopted the so-called Durham test for insanity, which would exonerate a defendant if his criminal conduct was the product of a mental disease or defect. Most states rejected this experimentation as being too vague and too open-ended, and several years later the court that first articulated the test rejected it.

3. ALI and Utah Rule.

In the meantime, the American Law Institute promulgated a new test for the insanity defense which was a modified version of the M'Naghten rule plus irresistible impulse test that had been in effect in some states including Utah. The new version further expanded the insanity defense by providing that a person was not responsible for criminal conduct if, at the time of such conduct, as a result of mental disease or defect, the actor lacked substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law. This standard was adopted by statute in the State of Utah in 1973. (§ 76-2-305, Utah Code Ann. 1953). Further, in the State of Utah, the burden of proof is on the prosecution, when any evidence of insanity is raised, to establish beyond a reasonable doubt that at the time the defendant committed the criminal act he was legally sane. In other states that burden is cast on the defendant.

4. Utah Law Compared to that in Hinckley.

The law in the State of Utah is today identical to the law existing in the District of Columbia as it was applied in the criminal prosecution against John Hinckley for the attempted assassination of President Reagan. Although the Hinckley case has awakened public concern with the insanity defense, many lawyers, psychiatrists and scholars have been disenchanted with both the M'Naghten standard and the American Law Institute standard for some time. An extensive review of the legal and psychiatric literature discussing the insanity defense has been made by the committee. Although only a small percentage of criminal cases involve instances where the defense of insanity is claimed, that fact is no justification for perpetuating an erroneous legal standard if, in fact, an erroneous legal standard has been adopted.

After extensive study, the committee concluded that the current test for insanity in the State of Utah was conceptually erroneous. The error was not so much in the action taken by the American Law Institute as it was in the original concept of the insanity defense as outlined by the thirteen English judges in the M'Naghten case. The committee has concluded that the question that the jury or judge ought to address is whether the criminal defendant at the time of the commission of the act had the required state of mind defined for the commission of the offense.

If a mental disease or defect precluded the defendant from entertaining the state of mind required for the offense charged, the defendant would be entitled to an acquittal on the charged offense and either a conviction should be entered on a lesser included offense for which the defendant did have the requisite state of mind, or if no such state of mind existed, the defendant should be acquitted altogether.

The defendant who is mentally ill, but not without the power to form the required criminal intent, ought to be convicted the same as any other defendant who committed a crime with the requisite state of mind. Such a conceptualization makes the claim of mental illness relevant to the state of mind of the defendant at the time of the commission of the offense, just as if the defendant had raised defenses other than mental illness, such as mistake of fact or lack of intent or any other condition that would cause a judge or jury to find that the defendant did not commit the offense charged. The insanity defense would no longer be an affirmative defense to be considered by the trier of fact independent of the defendant's state of mind. The burden, of course, would be on the prosecution, as it now is, to show that the defendant acted with the required criminal intent but there would be no other burden required to be met by the prosecution, nor would there be any other legal concept for the jury to consider. This standard has been proposed by eminent scholars throughout the United States and is reflected in proposed legislation currently before Congress, and legislation that has been before Congress in one form or another since 1973. This conceptual format has recently been adopted in one form or another with the same effect in the States of Idaho, Montana and Alabama.

5. Committee Recommendation.

The committee recommended that the standard for determining whether a defendant should be convicted of an offense, although mentally ill, would be whether

> "as a result of the mental illness [the defendant] lacked the mental state required as an element of the offense charged."

Mental illness would not otherwise constitute a defense and the term mental illness would not include voluntary intoxication. Mental illness would include a mental disease or defect. The legislation proposed by the committee would authorize a specific plea of "not guilty due to mental illness" and invoke procedures for examination of a defendant by qualified experts to determine the condition of the defendant at the time of the commission of the offense. The so-called battle of the psychiatrists would not be entirely eliminated, but it would be significantly reduced

because the scope of psychiatric opinion would consider only the question of whether the defendant had the required criminal state of mind, and would not consider what the committee believes to be the unanswerable question as to volition.

If, however, there ever were a defendant with such a deranged condition that he absolutely could not control his behavior (although he knew what he was doing), his actions would not be "voluntary acts" within the requirement of the Utah Penal Code (§ 76-1-601(1), Utah Code Ann. 1953). It is unlikely, in any event, that any such person would ever be brought to trial. The effect of the new test for insanity would be to narrow the defense from its current broad standard to one examining the mental state of the defendant at the time that the act was committed, and to harmonize it with the prosecution's burden in every criminal case.

The total abolition of any consideration of mental illness or insanity would, in the committee's opinion, be unconstitutional. Furthermore, the defendant who raises a defense of mental illness on the issue of the requisite state of mind cannot be deprived of the opportunity to offer relevant evidence on the issue. To do so would treat the mentally ill defendant in a different classification from other defendants who might also raise the defense of the lack of required state of mind and the disparate treatment would deny such defendant the equal protection of the law.

The committee also recommends that changes be made in the Criminal Code and Code of Criminal Procedure to harmonize the new mental illness concept with required court procedures, including the requirement that notice be given not only of a claim of total exoneration due to mental illness, but of any claim of diminished capacity. The defendant could enter a plea that he lacked the required mental capacity, or in the alternative, could deny the commission of the offense itself. (This could occur in a homicide case where a defendant contends <u>that he was so mentally ill</u> as to be unable to form the required state of mind for the commission of the offense, but that if he had the required state of mind to commit the offense, he was privileged to act as he did due to self-defense.)

6. <u>"Guilty and Mentally Ill" Concept</u>.

The committee believes that the proposed legislation would significantly improve the administration of justice in instances where mental illness is an issue in a criminal prosecution. In order to deal with the instances where a defendant may be mentally ill, but not so ill as to be free from criminal responsibility, the committee proposes that the concept of "guilty and mentally ill" be added to Utah law to deal with a special class of offenders.

This concept has currently been adopted in some form by the legislatures of at least ten states. The committee did not parrot the legislative format in any state, but tailored the proposal to what was believed to be the best consensus of all the legislation and one compatible with and in keeping with the available resources in the State of Utah.

Accordingly, under the Committee proposal, § 77-13-1, Utah Code Ann. (1953) would be amended to include five possible pleas to the offense charged. In addition to the pleas of "not guilty," "guilty" and "no contest" currently provided for under the statute, a defendant could enter a plea of "not guilty by reason of mental illness," or "guilty and mentally ill." If a defendant enters a plea of not guilty by reason of mental illness, as previously explained, he would place in issue the question of whether his alleged mental illness precluded him from entertaining the state of mind required for the offense charged. (A defendant would be allowed to plead not guilty, or in the alternative, not guilty by reason of mental illness.)

If, on the other hand, a defendant enters a plea of "guilty and mentally ill," such would not exonerate or excuse defendant's conduct. The offender found "guilty and mentally ill" is a person responsible for his criminal activities and held accountable for such under the law, but who may need specialized treatment.

In view of the additional pleas authorized under the Committee proposal, the Committee also recommends amendment of § 77-35-21(a) to allow the jury, in addition to a verdict of guilty or not guilty, to return a verdict of "not guilty by reason of mental illness," "guilty and mentally ill," "not guilty of the crime charged but guilty of a lesser included offense," or "not guilty of the crime charged but guilty of a lesser included offense and mentally ill."

7. Procedure upon Entry of a Plea of "Guilty and Mentally Ill."

If a defendant proffers a plea of guilty and mentally ill, the Court will hold a hearing to determine the claims of mental illness, and may order an evaluation of defendant by a suitable medical facility. If the trial judge finds that the defendant was mentally ill within the definition of that term, the judge could then dispose of the offender through various alternatives that would insure some degree of special custody and/or treatment. If the judge found that the defendant was not mentally ill, the guilty plea remains and the defendant would be sentenced as any other offender.

If the defendant enters a plea of "not guilty by reason of mental illness," a jury could also receive evidence that the defendant was currently mentally ill, as well as at the time of the commission of the offense, and could return a verdict of "guilty and mentally ill". However, the jury's verdict would be subject to a post-verdict hearing and the court would be required to confirm that the defendant was, in fact, currently mentally ill. If the defendant was found to be mentally ill, the court could then dispose of the case by sentencing the offender to the term provided by law, but the offender could be institutionalized or dealt with in a more suitable custodial or therapeutic setting.

The criteria for defining a person "guilty and mentally ill," and thereby subject to the special disposition by the court, have been carefully and narrowly drawn so as not to overload the mental health system which already has limited resources. Only those offenders who meet a carefully selected mix of criteria would be eligible for this special disposition. This process allows for the identification, confirmation and disposition of those special offenders who should not be excused from criminal responsibility but who should be recognized as having special needs requiring a particular type of custody or treatment.

An offender found guilty and mentally ill would not be released from serving his sentence unless the Board of Pardons determined, under criteria normally applied by the Board, that the person should be released. Additionally, if the Board considers a defendant for parole, it must consult with the treating facility, and upon recommendation of the facility, will make continued treatment a condition of parole. A person determined to be guilty and mentally ill who is in need of further institutionalization beyond the period provided by the criminal offense for which he was convicted should be certified for commitment through civil process.

Studies that have been done of the application of the "guilty and mentally ill" concept in other jurisdictions have shown that it does not overburden the system, does not provide an excuse for juries to convict when they shouldn't, and is not used to excuse a defendant's conduct. The concept appears to have been especially promising in the State of Michigan.

8. Conclusion.

The concepts that the Committee has recommended for legislative adoption have been thoughtfully considered. They are based upon considerations of scholarly analysis, empirical research reports, multi-disciplinary input, and sources outside of the Committee,

itself, which have been carefully and intelligently advanced by persons interested in this subject matter. It is believed that the Committee report reflects the best thinking of the legal and mental health community in the state and is corroborated by similar conclusions from others in Utah and in other parts of the country. Therefore, the Committee respectfully recommends to the Legislature the adoption of the attached legislation relating to the issue of insanity and mental illness in criminal cases as proposed by the Committee.

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*Concurs in amendment of Section 76-2-305, but dissents from remainder of Committee Report and Recommendation. The Chairman believes that this position is sound and very possibly, preferable.

**Dissents from Committee Report and Recommendation.